

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
 WAIKOLOA RESORT UTILITIES, INC., )  
 dba WEST HAWAII UTILITY COMPANY )  
 )  
 For Approval to Increase Rates. )  
 \_\_\_\_\_ )

DOCKET NO. 2006-0409

ORDER NO. 23551

Filed July 18, 2007  
At 10 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Karen Higashi



I.

Background

The filing date of WHUC's completed Application is January 26, 2007.<sup>3</sup> Thus, unless waived by the Parties, the nine-month deadline for the commission to issue its final decision on the merits of WHUC's Application is October 26, 2007, provided that the Parties strictly comply with the procedural schedule established by the commission.<sup>4</sup>

On April 10, 2007, the commission approved, with modifications, the proposed Stipulated Procedural Order submitted by the Parties.<sup>5</sup> Because the Stipulated Procedural Order, as approved by the commission in Order No. 23351, only established procedural dates up until the filing of the Parties' position statements, the commission instructed the Parties to submit their proposed hearing schedule by June 29, 2007.<sup>6</sup>

On June 29, 2007, the Parties timely submitted their proposed Supplemental Stipulated Procedural Order, in compliance with Order No. 23351. The Parties, in Section II (Schedule of

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<sup>3</sup>See footnote 1, above.

<sup>4</sup>HRS § 269-16(d).

<sup>5</sup>Order No. 23351, filed on April 10, 2007. The commission subsequently approved the Consumer Advocate's requests for additional time: (1) from June 8, 2007 to June 22, 2007, for the Consumer Advocate to file its position statement; and (2) from June 22, 2007 to July 20, 2007, for WHUC to file its rebuttal position statement. See Commission's letter, dated June 15, 2007. On June 22, 2007, the Consumer Advocate timely filed its direct testimonies, exhibits, and work papers, in lieu of its position statement.

<sup>6</sup>Order No. 23351, Ordering ¶ 2, at 4 - 5.

Proceedings) of their filing, propose the following additional procedural dates to govern this proceeding:

II.

SCHEDULE OF PROCEEDINGS

. . . . .  
Evidentiary hearing                    September 20 - 21, 2007  
  
Simultaneous Opening  
Briefs by Parties                    3 weeks after transcripts  
  
Simultaneous Reply  
Briefs by Parties                    3 weeks after Opening Brief

See Exhibit 1, attached, at 4.

II.

Discussion

WHUC's annual gross revenues are more than two million dollars. As such, with respect to the commission's adjudication of WHUC's completed Application, HRS § 269-16 provides in relevant part:

**Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and

shall be conducted as part of the ratemaking proceeding.

. . . . .  
(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received under the interim rates that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate . . . . .

HRS § 269-16(a) and (d) (emphasis added).

A.

Waiver of the Nine-Month Deadline for  
Commission Issuance of its Final Decision

HRS § 91-9(d) provides:

**Contested cases; notice; hearing; records.**

.....  
(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

HRS § 91-9(d); accord HAR § 6-61-35 (with the commission's approval, any procedure in a contested case may be waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default).

The nine-month deadline for the commission to issue its final decision on the merits of WHUC's completed Application is October 26, 2007, pursuant to HRS § 269-16(d). Here, however, the Parties' proposed Supplemental Stipulated Procedural Order includes one or more deadline dates that occur after October 26, 2007, including the deadline for the Parties to file their reply briefs.<sup>7</sup>

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<sup>7</sup>In this regard, the commission notes that in two recent evidentiary hearings involving docketed matters, the official transcripts were filed: (A) approximately nineteen days following the completion of a one-day hearing (In re Hawaiian Elec. Co., Inc., Docket No. 05-0146); and (B) approximately fifty-eight days following the completion of a three-day hearing (In re Hawaiian Elec. Co., Inc., Docket No. 05-0145).

The Parties have stipulated to a two-day evidentiary hearing that is scheduled for completion on September 21, 2007. Assuming that the official transcripts are filed on October 10, 2007, i.e., nineteen days after the completion of the evidentiary

Under the circumstances, by proposing one or more deadline dates that will occur after October 26, 2007, the commission finds that the Parties intentionally and voluntarily waive the commission's issuance of its final decision by October 26, 2007.<sup>8</sup> The commission approves the Parties' voluntary and intentional waiver of issuance of the commission's final decision within nine months from the filing date of WHUC's completed Application.

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hearing, the deadline dates for the Parties to file their post-hearing briefs will be: (A) October 31, 2007, opening briefs; and (B) November 21, 2007, reply briefs.

Alternatively, even if the official transcripts are expedited and filed on September 24, 2007, the first business day following the completion of the evidentiary hearing, the deadline requested by the Parties for the filing of their reply briefs will be November 5, 2007.

In essence, under either scenario above, the Parties effectively request one or more deadline dates that will occur after October 26, 2007.

<sup>8</sup>See In re Maui Elec. Co., Ltd., Docket No. 2006-0387, Order No. 23496, filed on June 19, 2007 (the parties, by the procedural dates proposed in their schedule of proceedings, effectively waived the issuance of the commission's final decision within the six-month deadline); accord In re Hawaii Elec. Light Co., Inc., Docket No. 05-0315, Order No. 22903, filed on September 28, 2006; see also In re Young Bros., Ltd., Docket No. 2006-0396, Order No. 23311, filed on March 16, 2007 (the commission approved the parties' voluntary and intentional waiver of the six-month deadline for the commission's issuance of its final order, based on the procedural dates proposed by the parties in their stipulated regulatory schedule); and In re Kaupulehu Water Co., Docket No. 05-0124, Order No. 21958, filed on August 3, 2005 (the commission approved the parties' waiver of the six-month deadline to issue a proposed decision and order, based on the procedural dates proposed by the parties in their stipulated prehearing order).

B.

Supplemental Stipulated Procedural Order

Consistent with Section II.A, above, the deadline for the commission to issue its interim decision, if any, is November 26, 2007, provided that the evidentiary record supports the granting of an interim increase in rates to WHUC, based on the probable entitlement standard. For this reason, the commission finds it necessary to modify the Parties' proposed Supplemental Stipulated Procedural Order by: (1) requiring WHUC to file a statement of probable entitlement by September 24, 2007; and (2) providing the Consumer Advocate with the opportunity to file a response, if any, to WHUC's statement of probable entitlement, by October 1, 2007.<sup>9</sup> In addition, the commission will: (1) schedule the prehearing conference for the week of September 10, 2007; and (2) set a deadline of September 13, 2007, for the Parties to file a settlement agreement, if any.

Subject to these modifications, the commission will adopt the Parties' proposed Supplemental Stipulated Procedural

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<sup>9</sup>See In re Hawaii Elec. Light Co., Inc., Docket No. 05-0315, Order No. 22903, filed on September 28, 2006 (the commission amended the parties' proposed schedule of proceedings to include the filing of a statement of probable entitlement by the applicant, and a response by the Consumer Advocate, given the parties' waiver of issuance of the commission's final decision within the nine-month deadline).

Order.<sup>10</sup> Accordingly, Section II of the Supplemental Stipulated Procedural Order is amended as follows:<sup>11</sup>

II.

SCHEDULE OF PROCEEDINGS

. . . . .

<u>Prehearing conference</u>	<u>Week of September 10, 2007</u>
<u>Settlement agreement</u> <u>(if any)</u>	<u>September 13, 2007</u>
Evidentiary hearing	September 20 - 21, 2007
<u>WHUC's Statement of</u> <u>Probable Entitlement</u>	<u>September 24, 2007</u>
<u>Consumer Advocate's</u> <u>Response to WHUC's</u> <u>Statement of Probable</u> <u>Entitlement (if any)</u>	<u>October 1, 2007</u>
Simultaneous Opening Briefs by Parties	3 weeks after transcripts
Simultaneous Reply Briefs by Parties	3 weeks after Opening Brief

III.

Orders

THE COMMISSION ORDERS:

1. The Parties' voluntary and intentional waiver of issuance of the commission's final decision within nine months from the filing date of WHUC's completed Application is approved.

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<sup>10</sup>A copy of the Parties' Supplemental Stipulated Procedural Order, as adopted by the commission with modifications, is attached as Exhibit 1 to this Order.

<sup>11</sup>Additions are underscored.

2. The proposed Supplemental Stipulated Procedural Order submitted by the Parties on June 29, 2007, attached as Exhibit 1 herein, is adopted as modified to govern the remainder of this proceeding.

3. Section II (Schedule of Proceedings) of the Supplemental Stipulated Procedural Order is amended to read as follows:

II.

SCHEDULE OF PROCEEDINGS

. . . . .

Prehearing conference	Week of September 10, 2007
Settlement agreement (if any)	September 13, 2007
Evidentiary hearing	September 20 - 21, 2007
WHUC's Statement of Probable Entitlement	September 24, 2007
Consumer Advocate's Response to WHUC's Statement of Probable Entitlement (if any)	October 1, 2007
Simultaneous Opening Briefs by Parties	3 weeks after transcripts
Simultaneous Reply Briefs by Parties	3 weeks after Opening Brief

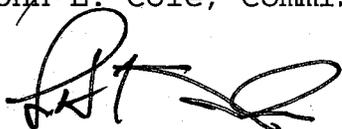
4. In all other respects, the Supplemental Stipulated Procedural Order remains unchanged.

DONE at Honolulu, Hawaii JUL 18 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2006-0409.sl

DIVISION OF CONSUMER ADVOCACY  
Department of Commerce and  
Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2800

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d/b/a WEST HAWAII UTILITY COMPANY, )  
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DOCKET NO. 2006-0409

SUPPLEMENTAL STIPULATED PROCEDURAL ORDER NO. \_\_\_\_\_

Filed \_\_\_\_\_, 2007

At \_\_\_\_\_ o'clock \_\_\_\_m.

\_\_\_\_\_  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

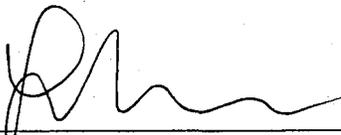
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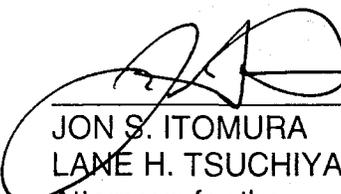
DOCKET NO. 2006-0409

SUPPLEMENTAL STIPULATED PROCEDURAL ORDER

Applicant Waikoloa Resort Utilities, Inc., d/b/a West Hawaii Utility Company ("WHU") and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") hereby stipulate that the attached Supplemental Stipulated Procedural Order is mutually accepted to each respective party.

DATED: Honolulu, Hawai'i, June 29, 2007.

  
\_\_\_\_\_  
BRUCE D. VOSS  
LORI N. TANIGAWA  
Attorneys for Applicant  
Waikoloa Resort Utilities, Inc. dba  
West Hawaii Utility Company

  
\_\_\_\_\_  
JON S. ITOMURA  
LANE H. TSUCHIYAMA  
Attorneys for the  
Division of Consumer Advocacy  
Department of Commerce  
and Consumer Affairs

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of )  
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 WAIKOLOA RESORT UTILITIES, INC., )  
 d/b/a WEST HAWAII UTILITY COMPANY, )  
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DOCKET NO. 2006-0409

SUPPLEMENTAL STIPULATED PROCEDURAL ORDER

On December 29, 2006, Waikoloa Resort Utilities, Inc. d/b/a West Hawaii Utility Company ("WHUC") filed an application seeking approval to increase its rates ("Application"), pursuant to Hawaii Revised Statutes Section 269-16.

By Order No. 23266, filed with the Public Utilities Commission ("Commission") on February 20, 2007 in Docket No. 2006-0409, the Commission determined that the date of the completed Application filed by WHUC was January 26, 2007, and instructed WHUC and the Consumer Advocate (to be collectively referred to as "Parties") to file a stipulated procedural schedule for the Commission's review and consideration within thirty days of Order No. 23266.

By Order No. 23351, filed on April 10, 2007, the Commission adopted the Parties' proposed Stipulated Procedural Order subject to a couple additional provisions including a June 29, 2007 deadline for the Parties' proposed hearing schedule and allowance for Parties' written request for modifications to the Stipulated Procedural Order subject to approval by the Commission.

By a determination letter, dated June 15, 2007, Commission Chairman Carlito P. Caliboso determined that there was good cause shown, pursuant to HAR § 6-61-23(a)(1), to grant the Consumer Advocate's request to enlarge the period to file the Parties' Statement of Positions. The Consumer Advocate was granted relief to file its Written Direct Testimony, in lieu of a Statement of Position ("SOP"), on June 22, 2007 instead of June 8, 2007 and WHUC will file its SOP on July 20, 2007.

Pursuant to Order No. 23351, the Parties have reached an agreement on a proposed hearing schedule for Docket No. 2006-0409 and provide this Supplemental Stipulated Procedural Order to the Commission. By this Supplemental Stipulated Procedural Order, the Parties intend to inform the Commission of mutually acceptable dates. This Supplemental Stipulated Procedural Order does not intend to amend or substitute any issues and procedures set forth in Order No. 23351.

Section II of Exhibit 1 of Order No. 23351 provided the original procedural dates.

Thus, the Parties seek to amend Section II as follows:

II.

**SCHEDULE OF PROCEEDINGS**

WHUC Application	January 26, 2007
CA Information Requests ("IRs") to WHUC	Tuesday, April 3, 2007
WHUC IR Responses to CA	Friday, April 20, 2007
CA Supplemental IRs ("SIRs"), if necessary	Friday, May 4, 2007
WHUC SIR Responses to CA	Friday May 18, 2007
CA Direct Testimony, Exhibits and Workpapers	June 22, 2007
WHUC Statement of Position or Direct Testimony, Exhibits and Workpapers	July 20, 2007
Evidentiary Hearing	September 20-21, 2007
Simultaneous Opening Briefs by Parties	3 weeks after transcripts
Simultaneous Reply Briefs by Parties	3 weeks after Opening Briefs

DONE at Honolulu, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By \_\_\_\_\_  
Carlito P. Caliboso, Chairman

By \_\_\_\_\_  
John E. Cole, Commissioner

By \_\_\_\_\_  
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

By \_\_\_\_\_  
Michael A. Azama  
Commission Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **SUPPLEMENTAL STIPULATED PROCEDURAL ORDER NO. \_\_\_\_\_** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS  
335 Merchant Street  
Room 326  
Honolulu, Hawaii 96813

2 copies  
by hand delivery

BRUCE D. VOSS  
LORI N. TANIGAWA  
BAYS, DEEVER, LUNG, ROSE & BABA  
Ali'i Place, 16<sup>th</sup> Floor  
1099 Alakea Street  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

MR. BRUCE MOORE, DEVELOPMENT MANAGER  
WAIKOLOA LAND AND CATTLE COMPANY  
150 Waikoloa Beach Drive  
Waikoloa, Hawaii 96738-5703

1 copy  
by U.S. Mail

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Karen Higashi

CERTIFICATE OF SERVICE

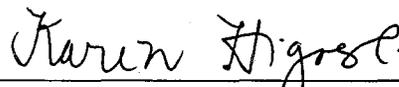
I hereby certify that I have this date served a copy of the foregoing Order No. 23551 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

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Counsel for WHUC

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WAIKOLOA LAND AND CATTLE COMPANY  
150 Waikoloa Beach Drive  
Waikoloa, HI 96738-5703

  
\_\_\_\_\_  
Karen Higashi

DATED: JUL 18 2007